

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

LEMUEL H. HAYWOOD, III,)	
)	
Petitioner,)	
)	
v.)	CIVIL ACTION NO. 05-AR-2159-S
)	
WARDEN BILLY MITCHEM; ATTORNEY)	
GENERAL FOR THE STATE OF ALABAMA,)	
)	
Respondents.)	

MEMORANDUM OF OPINION

On August 10, 2005, Lemuel H. Haywood, III, submitted this *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 to the United States District Court for the Southern District of Florida. On September 23, 2005, this petition was ordered transferred to the United States District Court for the Northern District of Alabama because this is the district in which the court of conviction being challenged is located. The petition was filed in this court on November 3, 2005.

In 1985, Haywood was convicted in the Circuit Court of Jefferson County, Bessemer Division of armed robbery and was sentenced to life imprisonment without parole. Haywood previously filed a federal habeas corpus petition in this court challenging this same conviction. (See Court's Exhibit A, CV92-B-973-S, Report and Recommendation and Final Judgment.) Haywood did not appeal from the denial of the petition for writ of habeas corpus.

Title 28 U.S.C. § 2244(b)(3)(A) provides:

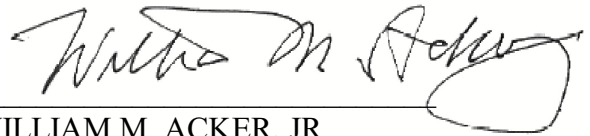
Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

Haywood failed to obtain authorization from the Eleventh Circuit Court of Appeals to file a second or successive habeas corpus application under section 2254 prior to filing this action.

In *Hill v. Harper*, 112 F.3d 1088, 1089 (11th Cir.), *cert. denied*, 520 U.S. 1203 (1997) the Court of Appeals for the Eleventh Circuit held that where the petitioner had not applied to it for permission to file a second habeas petition the district court lacked jurisdiction under 28 U.S.C. § 2244(b)(3)(A) to consider petitioner's request for relief.

This action is due to be dismissed for lack of jurisdiction. A separate Order consistent with this Memorandum of Opinion will be entered simultaneously herewith.

As to the foregoing it is SO ORDERED this the 15th day of December, 2005.

A handwritten signature in black ink, appearing to read "William M. Ackers, Jr.", written over a horizontal line.

WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE